EXHIBIT 3

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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
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IN RE: TERRORIST ATTACKS ON
SEPTEMBER 11, 2001 03 MDL 1570 (GBD)(FM)

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December 14, 2011
2:10 p.m.

Before:

HON. FRANK MAAS,

Magistrate Judge

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(In open court; case called)

THE COURT: Good afternoon, everyone. Why don't we start with the easiest issue which is whether there should or should not be reply submissions concerning discovery issues where the order that I entered said yes and had a schedule. There were references to an informal agreement that counsel may or may not have had regarding no replies. I guess my reaction is I don't care which of those two we follow as long as everybody plays by the same rules.

MR. CARTER: Your Honor, if I may. I think the agreement had to do with whether or not there would be replies in the context of the agenda letters not as to substantive briefing on discovery motions.

THE COURT: Which makes more sense.

MR. CARTER: We're all in agreement that we are going to continue to do reply briefs on substantive discovery motions.

THE COURT: I missed that nuance. I think on the agenda letters I don't really benefit from replies. So, why don't we say that as to agenda submissions, ideally there shouldn't be a reply in any event because ideally there would just be one letter setting forth two positions. But if that's not feasible, then there would be a submission from the plaintiffs and the defendants. I don't need a reply.

Stated more affirmatively, I don't want a reply.

Refresh my recollection, I know there is the document demands and interrogatories. There was a third topic I had indicated.

MR. HAEFELE: The stay for Pete Seda.

THE COURT: As far as I'm concerned there is no stay in place. So, as far as I'm concerned, the materials ought to be produced now, and I know that the defense takes a different view of that. And as a practical matter, I suppose until somebody makes a motion or Judge Daniels visits the question, I don't know there is anything particular for me to do.

MR. HAEFELE: So just to clarify, your Honor, we don't really need you to indicate a date when the response -- when the documents are to be produced. They are to be produced immediately.

THE COURT: I had not done that?

MR. HAEFELE: You had not given us a date, no.

THE COURT: I'm going to say January 20.

MR. KABAT: Your Honor, may I be heard on that?

THE COURT: Yes.

MR. KABAT: In our objection, which I don't know if you've had the chance to review, we briefed at length the case law from the jurisdiction that the Fifth Amendment privilege remains intact while an appeal is pending. And I recognize that the parties did not fully brief that issue because we were thinking in the context that that was going to be the motion

for a new trial might be granted, so we were looking at it in that context. And we are willing to move forward with the motion to stay discovery in addition to the objection that we filed. But as a matter of judicial economy, we would prefer a ruling from the bench on that.

THE COURT: Believe it or not, I actually am aware that there is a Fifth Amendment and it continues to apply when an appeal is pending. But as my decision said, sometimes it is appropriate to require a party to make what may be a difficult choice and the thrust of my decision was that you should, for reasons I outlined in my original decision, Mr. Seda should be put to that hard choice.

You can make the motion for a stay and I will look at it. But I'm likely to deny it. And so unless and until Judge Daniels rules otherwise or he grants a stay, I'm going to stick with the January 20 date for production I've just set.

Anything else on that? We have the October 26 letter motion to compel where it seems to me what makes sense is to go through the document requests, the interrogatories just parallel that.

MR. COTTREAU: Your Honor, I don't believe there are interrogatories that have been propounded by the defense group as a whole. This is just the document requests.

THE COURT: Okay. I thought I saw a group of interrogatories that had been furnished. Is that in the big

pile of documents you gave me, Mr. Haefele?

MR. HAEFELE: I don't recall there being interrogatories that are the subject of this motion.

MR. CARTER: Your Honor --

MR. HAEFELE: There were a voluminous number of document requests that are not the subject of the discovery that are the individual defendant's discovery demands to plaintiff.

THE COURT: Right. This is the first consolidated set.

MR. HAEFELE: Correct. The only set that was at issue is a set of document requests.

THE COURT: Okay.

MR. HAEFELE: I believe there is a set of 15 I think.

THE COURT: Exhibit C to the October 26.

MR. COTTREAU: Exhibit C is the plaintiff's objections.

MR. HAEFELE: Exhibit A is the actual request.

THE COURT: It doesn't make sense to look at A without C so I've turned to C.

Document request number one is all documents concerning standing to sue on behalf of the individual whose rights you represent. There is a lot of definitions if I recall correctly, but "individual" isn't one of them.

I suppose to the extent it deals with the insurer

plaintiffs, I'm not sure I understand it in relation to true individuals.

MR. COTTREAU: Sure, your Honor. Just a few words about that. First with respect to the individual victims who are deceased, it would refer to the standing to sue on behalf of the personal representatives. And same with respect to something that would be akin to the New York survivor statute. If there were injured victims who became deceased after the injury, but yet those claims are being brought on behalf of an injured victim who didn't die from the events of September 11, there is at least in New York there is a survivor statute that requires something similar in the wrongful death context, but just for injured plaintiffs who then subsequently die of other causes.

So that's how it would relate on individuals. But for some of the individuals it would have no applicability.

THE COURT: I understand why ultimately that may be relevant and it probably does go to liability rather than damages. But, since that's unlikely to eliminate any or even many of the plaintiffs, why is that a productive way of proceeding now? Other than as a make work exercise for the plaintiffs.

MR. COTTREAU: Sure, your Honor. It is a little bit hard to get transparency in this process and precisely who a lot of the plaintiffs are. At least it is for us on the

defense side. We know this from some news reports that the special master of the victim compensation fund had apparently planned to reject 2,000 claims. We are not sure on what grounds he rejected them, either personal representative that was inappropriate, whether they weren't injured at all, but given the high participation rate of actual victims and given the other claims that have been rejected apparently, it is a little bit difficult to understand who may be left. And that's what we're trying to get at with this request.

MR. HAEFELE: Your Honor, if we can probably address what I would say is one, two, three and maybe some of four all together I think --

THE COURT: I was going to say I thought this was sort of a generic way of getting at some of the others, but please go ahead.

MR. HAEFELE: If I can speak predominantly to the issue of the requests for the information from the individual plaintiffs for what the defendants call the standing issue or the VCF claim issues, or they go so far as to say "or any other fund" without really delineating what funds they want to have information from.

But I think we would break it down into three separate reasons why the discovery shouldn't be had. Number one, the defendants' argument makes the Court's order phased discovery meaningless. Essentially what they argue is because standing

this information they are seeking is necessary for in the long run liability to be had, it must be discovery regarded liability so it falls into the liability category. But the way they're lumping it in, you can make the same argument as to damages. And in other words, if you are talking about a negligence case, what are the elements of negligence. One of the elements to have liability for negligence is damages. And they're lumping the standing issue in exactly the same way. Which means that the order of the Court for bifurcating the discovery is absolutely meaningless. Nothing falls outside of liability based on that argument.

THE COURT: Is it correct that a victim or a victim's estate that applied for relief from the 9/11 victims fund waived the right to proceed against anybody else?

MR. HAEFELE: Depends on what you mean by "anybody else." If you are saying against -- have they waived the right to go against everyone? The answer is no. Have they waived the right to go against any certain entity? Yes, they have.

THE COURT: Airlines I gather.

MR. HAEFELE: The airlines, the security companies, and Judge Hellerstein addressed those issues in a number of cases where there were some plaintiffs in front of Judge Hellerstein that had gone into the VCF or had filed a document with the VCF that Judge Hellerstein indicated that that indicated a waiver and --

THE COURT: Even if he didn't get funds, is that correct, if you submitted an application and went into the process?

MR. HAEFELE: Well, I think the answer for that -- I can recall at least one instance where it was a filing that was a denial and it was indicated that that wasn't an election. Meaning they didn't get funds because they were rejected from the VCF so they weren't in the VCF. In that instance, the answer was no, that's not a waiver. But if you did go -- if did you make a filing that resulted in a claim getting accepted into the VCF, it was a waiver as to the airlines and the other defendants that were in those -- in that litigation.

MR. KREINDLER: If I can just jump in because, your Honor, this point, as you know from last time, has me very exercised.

THE COURT: Has been very?

MR. KREINDLER: Has me very exercised. As all remember, this legislation creating a fund was enacted very quickly after 9/11. First of all, within five days Congress passed a law to save American and United and their insurers, and then the fund legislation was created.

In the original version, the original version said if you go into the fund, you waive your right to bring a civil suit. An hour after that was published, I and my father were on the phone with Chuck Schumer who introduced it and said you

screwed it up. You meant to do exactly what we're doing in the Libya case, where, after settlement with the airline, the security company, all civil defendants, except for the terrorists and those who knowingly supported the terrorists, that's the limitation of the waiver.

So that day a new version was introduced, our version, specifically to enable these suits to go forward. I'll testify to it, Senator Schumer will testify to it. Special Master Feinberg at the 100 meetings I had with him and the families would say we're limited in what we can do. Your ultimate recovery is against the terrorist sponsors.

THE COURT: If the statute is unambiguous on its face, and wrong, it seems to me you don't get civil legislative history. If it says the earth is flat and we can stipulate that the earth is round, if it says unambiguously the earth is flat, that has to be the conclusion from analysis of the legislation. That obviously is an issue for Judge Daniels, I suppose, ultimately to deal with.

Of these first few requests, it seems to me one that perhaps -- and maybe you can enlighten me -- is not unduly burdensome is to say who submitted an application. Not did you get money, not give us a copy of the application. But there ought to be a way I would think to get a printout of who submitted an application.

MR. KREINDLER: Well, your Honor, I'd say two things.

Number one, it is enormously burdensome. Remembering in 2001, at least our office did not have a computer system that would enable us to do then what we can do readily 10 years later. To do that, we would need to send teams of people to warehouses in Queens, going through the boxes of each plaintiff's file to compile that list. That is going to cost thousands and thousands of hours, and in my opinion, is a complete waste of time because there is no legitimacy to this request at all. This is not a situation where a defendant will come in and say, well, listen, if we're only facing a hundred plaintiffs, maybe we're going to settle, but we're not going to settle if there is 3,000.

Until such time as they come forward and say in good faith we're prepared to offer money to settlement, in my opinion, this is wholly illegitimate and is simply designed to harass us so we can't do the liability work we want to do.

And if I can add one other thing. I know I'm exercised about it. In this case, this case will only be resolved one way. And it is the way terrorism cases have gone. If, whether it is Sudan who goes first or charities or Saudi defendants or Iran, at some point, the dam will break, and some defendant will say we want to get out of this case, and we're prepared to offer a billion dollars, 500 million. And then your Honor or a special master would have to work with that willingness to invite us to submit demands on all our cases

that would total the sum of the money the defendants will have to spend. It will make no difference to any defendant whether they're facing 4,000 death and injury claims or 1,000 claims. I think it is just an attempt to prevent us, after 10 years of work, from continuing to do what we're doing, and wasting a huge such money and manhours for no legitimate purpose at all.

THE COURT: You've told me that Kreindler & Kreindler was in the dark ages back in --

MR. KREINDLER: Me especially, your Honor.

THE COURT: -- 2001. But is it clear that Ken Feinberg was equally limited? I can't imagine that there isn't some printout that answers, not in terms of source documents, but says that victim one submitted an application on this date, and perhaps answers all the questions and the check was cut on Y date for the amount.

MR. KREINDLER: I can't speak for him. I know he's got his hands full with BP and Deepwater. I don't know whether any of those records exist. I doubt they would be in his possession if they did. But again, I get back to the point it makes no difference.

THE COURT: I understand that. And as a practical matter, you may be correct.

MR. HAEFELE: Two additional points. And I think go along with what Mr. Kreindler said. The first one is, and I think he may have said this but I'm not sure. It makes no

difference whatsoever, because the Court can make a determination on the substantive question that the defendants are raising without a stitch of piece of information that they are asking for. It is a legal issue. It is a legal question. Either there was waiver under the statute or there wasn't waiver under the statute. They don't need anything from the plaintiffs to make that argument and to make the legal argument. There is not a piece of paper that would evidence one way or the other on that legal argument. So none of the discovery they are asking for in these three or four questions has anything to do with the substance of that issue. And if --

THE COURT: Yes.

MR. HAEFELE: If I can also address the defendants' interpretation of the ATSSSA. First off, the statute itself is the Air Transportation Safety and Systems Stabilization Act. It has nothing do with terrorist defendants. And the carve-out that was there was intended by Congress to say we're carving out, we're focused on the non-terrorist defendants. We're not focused on the terrorist defendants. The name of the act says that, Judge Robertson when he made his decision in Burnett v. Al Baraka, 274 F. Supp. 2d 86 (DDC 2003), he indicated that the purpose of the statute was to save the airline industry. It wasn't to protect terrorists. And if it gets interpreted in a way that protects the terrorists' cohorts, it is going to be completely contrary to the intent of the ATA which is to step

up and prevent terrorists from acting.

So you have the ATA, you have the ATSSSA. You are going to create a conflict if you interpret it -- I know defendants say it is not a conflict, but I don't see how you can say that to carve out something and interpret it so it protects alleged terrorist cohorts isn't contrary to the interests of the ATA, it is. So that's one of the reasons why you just can't interpret it the way the defendants -- or we would argue that you can't interpret it that way. It would create a conflict.

MR. COTTREAU: Your Honor, let me say a few things. First of all, I don't represent a terrorist or a terrorist cohort. I represent a bank that has never been on a terrorist list ever produced by this government or any OFAC list, any sanctions list whatsoever. So the notion we don't fall within the waiver, and I am sure my co-defendants feel the same, at least with respect to some of the clients here if not all.

What the statute says is that a claimant who files for compensation waives any right to file a civil action or to be a party to an action in any federal or state court for damages sustained as a result of the terrorist related aircraft crashes of September 11.

And the waiver form which is in our appendix at D and E, under appendix D at page 16, says in part 3D which is the last part of page 16 in our exhibit D, says on page 16: I

hereby acknowledge -- this is the last two paragraphs on the page -- I hereby acknowledge that submitting a substantially complete compensation form for deceased victims, I am waiving the right to file a civil action or be party to an action in any federal or state court for damages sustained as a result of the terrorist related aircraft crashes of September 11.

It goes on and says in the second sentence of the next paragraph: This waiver does not apply to a civil action to recover collateral source obligations or to a civil action against any person who is a knowing participant in any conspiracy to hijack any aircraft or commit any terrorist act.

THE COURT: Which language -- I understand it is fairly broad, but I can think of at least two arguments that plaintiffs could make to say that it doesn't preclude the suits against banks and others. It seems to me that --

MR. COTTREAU: Can I say one quick word, and I don't mean to interrupt. But I think it is an important point.

THE COURT: That's fine.

MR. COTTREAU: The point is about why it is we requested the forms. We are sensitive to the issue. We don't want to overly burden victims here. We tried to focus on documents that were likely to be in the lawyer's possession. We tried to focus on documents that would be relatively easy to produce. This isn't damages discovery. We are not asking to take interrogatories of the amount that they earned, what their

earning potentials were, what damage it did to their families. I am not here to dispute that. Okay.

I'm here to just say we need the form for the following reasons: One, the waiver, there might be disputes about whether the waiver is substantially complete or the form substantially complete or not substantially complete. The waiver turns on that as the language says.

THE COURT: But as a practical matter, if there are 3,000 potential plaintiffs, certainly a large group of those will fall into category of folks who successfully completed the process, which in your view may be the end of their claims here. Or in the plaintiffs' view doesn't matter one iota. And that's something ultimately Judge Daniels will decide. But, let me take --

MR. COTTREAU: If I can mention two other things about why we need the form.

THE COURT: Let me just jump ahead a little and then I'll let you go back.

As to the insurers there was a submission to me that enabled me to come up with nine billion some other numbers and 99 cents as the appropriate treble damages a few weeks ago. That wasn't shared with the defendants, but it seems to me is responsive to at least some of these requests and obviously not burdensome to produce.

MR. CARTER: Your Honor, it is misleading to suggest

it wasn't provided because it was in fact provided. The schedules to which your Honor is referring as well as the affidavits were submitted with that motion for the assessment of damages as to al Qaeda.

After we submitted that motion to your Honor for resolution, Mr. Kabat and Mr. Cottreau contacted me and advised that the schedules that supported the affidavits had been filed under seal. And they wanted to view those schedules in order to determine whether or not they would be opposing the motion for assessment as to al Qaeda, and I provided the schedules to them in that context so they have seen them. Those schedules cover a fairly large group of the insurer plaintiffs. There are a few that didn't participate in the motion for assessment.

When we initially had the meet and confer about this issue way back in a May or so, the solution that I offered to their inquiry about standing and the basis of the subrogation rights was to say we filed schedules that identified every insured, the location of the loss, the policy number, amount that was paid, I will give them to you. And they will verify for you these insurer plaintiffs do in fact have standing to bring their claims. There is no further dialogue about that.

So in a separate setting, most of the schedules have been provided. I'm perfectly willing to provide the rest of them subject to the appropriate confidentiality provisions of the existing confidentiality order. It just was not an offer

that was pursued by defendants at all.

THE COURT: I guess there are also issues, the extent to which umbrella coverage perhaps took somebody out of the claim to a certain extent. I am not sure whether that was part of what you were getting at, Mr. Cottreau.

MR. COTTREAU: There was. We are entitled to discover whether they've been made whole by reinsurers or what the arrangements were with respect to the policies.

THE COURT: But again, why does it matter at this stage? Let me assume for the sake of argument that this is liability oriented. As a practical matter, why is this important to get now?

MR. COTTREAU: Your Honor, we believe that this case can be substantially narrowed. This isn't just a modest narrowing. We believe on the individual claimants, we are not sure if anybody would be left under the standards of liability that are pled in any of the complaints. It may be under the waiver standard. With respect to the --

THE COURT: But, you don't need any applications to make a motion to Judge Daniels saying -- or perhaps you need a few specimens, one of somebody who submitted the claim and was paid, somebody whose claim was submitted and rejected, and maybe there are categories of rejections that would be useful to have specimens for, rather than 3,000 files.

MR. COTTREAU: Your Honor, if that's a suggestion that

the plaintiffs are willing, and if there is a judgment that could bind those individuals without naming them or putting their names into the categories, I suppose that would be workable. But as a practical matter, I think it might be difficult without being able to do that.

MR. CARTER: I think we just jumped from insurance to the individuals so --

THE COURT: We did. I'm sorry to be dancing around that way with you.

MR. COTTREAU: Your Honor --

MR. HAEFELE: I do want to finish but I don't want to jump in on Mr. Cottreau.

MR. COTTREAU: If I can say a couple of words about the forms themselves, and they are lengthy forms. But I think it is helpful to just say what types of information we're into.

We were amenable to letting the plaintiffs, if they wanted to, redact the forms. We thought that would be more burdensome to request parts of the forms than just request the forms.

But there are basic information about both the site where the victim was injured, where the victim worked, and where the victim lived on 9/11. All of those three facts are going to be potentially relevant to the choice of law analysis. We're facing a class action here. We will want to know how many potentially different states law applies. These forms

would be useful to that exercise.

In addition, in addition to that, there is information in there about insurance and other payments. There may be workman's compensation issues here that bear on the issue as well as other issues. So there are other important facts in these forms.

In part one, I'm referring to parts 1A, 1B, if you are looking at, depending which form you are looking at, I'm looking at the wrongful death personal representative form.

THE COURT: Which is D or E?

MR. COTTREAU: D, your Honor. Section 1A asks you where you lived on 9/11 or where the victim lived on 9/11, essentially residence. Part 1B asks you simply to identify the nature of where your injury occurred. What was the location of the attack. Part C goes to information about the personal representative and there is a related document request in part 4 that Mr. Feinberg required them to submit forms showing they were a duly appointed personal representative. Those are very easy issues to get through.

THE COURT: Well --

MR. COTTREAU: Here's one of the important points here. A lot of these claims, wrongful death, and some of the other claims there is a negligent infliction of emotional distress claim in some of these complaints. What we fear is on summary judgment this is going to become a negligence case.

And we don't believe it is a negligence case on our side. And under the ATA, the standard is not the same as a conspiracy. There doesn't need to be an agreement under the ATA. And we believe the waiver fundamentally shifts how this case is briefed on summary judgment, as well as some of the choice of law issues that might apply not only to the individuals but to the carriers.

We've asked for and we're willing to accept modest discovery on those issues. We understand that there is going to be some burden, because Mr. Kreindler may have not organized his files in a warehouse in a manner that makes this perfectly easy. But we think with some amount of effort, some reasonable amount of effort, what we are requesting here is not unduly burdensome in light of how it frames and will shape summary judgment.

THE COURT: Mr. Haefele.

MR. HAEFELE: Thank you, your Honor. First point I'd make is in Mr. Cottreau's argument he went through and quoted that language from the statute and the language from the forms and the language here and the language there. Indicating that for the most part, if not entirely, he has everything that he needs to make his argument on the waiver issue. I think your Honor picked up on that when you said either lots of the plaintiffs did waive or lots of the plaintiffs didn't waive, depending on how the statute is interpreted.

Again I say, not a stitch of any piece of paper is necessary to make the argument. And I think Mr. Cottreau made that point by going through and trying to make the argument here.

The other point I'd make is that, to my knowledge, many if not all of the plaintiffs who are in this litigation who also went into the VCF were told this litigation is not among the litigations that are waived when you go into the VCF. It will be fundamentally unjust to turn around after the fact, after the representations have been made, including representations from the special master to induce them into the fund and then say, by the way, that's waived. I know I told you it wasn't, but it was.

THE COURT: But Mr. Cottreau's clients and the other defendants weren't among the people making those misrepresentations, if they were misrepresentations, which remains to be seen.

Hear me out for a minute. Even if this is liability oriented, I think it is somewhat premature to go through it in fine detail. There is the problem that was pointed out in terms of the way the Kreindler & Kreindler files are organized, I'm going to reserve decision on these first few document requests because I want the parties to explore the possibility of sampling with a fairly small sample, or agreeing that there are claims that followed different trajectories from submission

of the claim approval and the check being cut, to categories of reasons why certain numbers of claims were rejected and perhaps producing specimens of those.

We're a long way off from summary judgment I sense, and it seems to me there probably are non-burdensome ways, not unduly burdensome ways, of dealing with this as to the individual claimants to the VCF.

As to the insurers, Mr. Carter indicates that defendants have received schedules which was not my understanding from the letters, and maybe it occurred after the letters. But --

MR. COTTREAU: If I could say a word on that. I believe we have received some of the schedules that were shared. I am not sure whether it was all of them that were shared with your Honor. But the ones we have are only as to five or maybe 10 of the insurance companies. Not to all of Mr. Carter's 40 some clients.

MR. CARTER: Your Honor, the schedules that were relevant to the motion for assessment were actually provided back in August. So they've had them for some time, and again, I offered during the meet and confer in May to provide them for all the carriers as an accommodation and as a way to work out this dispute, and the proposal was never pursued. And so, it has been out there since that time, and I'm perfectly happy to provide the schedules.

MR. COTTREAU: We're happy to accept them, and would ask for that and any reinsurance information as well that might extinguish claims.

MR. CARTER: With regard to the reinsurance information --

THE COURT: I guess the theory would be that if carrier A paid X, but either was reimbursed from reinsurance or didn't pay X because some portion of that was paid by the reinsurance carrier, the claim resides with the reinsurance carrier who now is time barred from bringing a claim and effectively it is cut off. Is that where you're headed?

MR. COTTREAU: That would be an outline of one argument we would make.

MR. CARTER: That wouldn't be an argument that would carry much weight. With regard to the reinsurance, to the extent there is reinsurance, first of all, it is not going to wipe out wholesale the claims of these carriers. The reinsurance within the context of September 11 operated in a way that is unique in the history of reinsurance, which dates back many hundreds of years. Because you had various lines responding to an event that never contemplated to respond it to a single catastrophe. They were viewed as completely unrelated so they were coming together.

What is almost universally true within the reinsurance arena is the treaties, the custom and practice, dictate that

the decedent is responsible for pursuing subrogation and salvage for the benefit of the reinsurers. And there is some very complicated process through which they resolve how the money goes.

But it is much the same as and has been recognized in New York that an insured can bring an action for recovery of an entire loss, even if it has been partially compensated, in which case it holds in trust the amount that was paid by the insurer, and is then reimbursed for them. And that's how New York operates in this area.

The case they cite on this point to suggest that it would somehow impact standing has absolutely nothing to do with reinsurance. It has to do with another state's somewhat unusual uninsured motorist law, and the state agency that sort of uses insurers as proxies for administering claims.

What is interesting is that the statute that the insurance company relied upon in that case as a basis to bring the claim appears to support them bringing a claim for subrogation. It just didn't support the fraud claim they were bringing in that particular context. It doesn't speak meaningfully at all to this issue, and the fact that it doesn't speak meaningfully is an indication that there aren't cases that support this view.

What I would say in addition, your Honor, is one of the problems is these requests aren't in the least bit focused.

The request is for any information concerning any insurance arrangement or any insurance policy. It literally encompasses the sun and the moon with regard to billions of dollars' worth of insurance claims.

And in prior context, where plaintiffs have come here with very broad discovery requests, I think the Court has appropriately told us that I'm going to deny it as overbroad. And that happened in the context of the Muslim World League and the IRO when we wanted their documents pertaining to their activities in Afghanistan. You told us not as frame, but if you want another shot in a way that's reasonably focused maybe we'll do that.

I think maybe if we pursue a more focused inquiry, we might advance the ball a little bit. But, as it is framed presently, we would be obligated to give the individual claims schedules for the personal property items that were in people's offices. It is tens of millions of documents I'm quite sure.

MR. COTTREAU: It is a little hard for me to answer as to the applicability of case law when Mr. Carter has had full discovery and apparently has gone through all of these arrangements in great detail and has looked at the documents and we haven't. All we are asking for is parity in the discovery process so we can come back and make a legal argument.

THE COURT: Are these by and large treaty reinsurance

arrangements?

MR. CARTER: I believe they are. In all candor, I haven't gone through them in considerable detail. I read an article about how the reinsurance industry responded to 9/11. I would prefer in my life to avoid getting deeply involved in reviewing reinsurance treaties, quite frankly.

I am sure these carriers have actual losses of their own so I don't think this is going to most ball substantially forward.

It is another one of these issues, it seems that we should be focusing our effort on the issues that are pivotal and have the capacity to result in some kind of resolution in this, either by dismissal wholesale or by a settlement. And the issue that's going to get to that is the discovery into whether or not there is sufficient evidence that these defendants engaged in conduct that gives rise to liability such that they can be held over past the summary judgment phase.

If it turns out that they all, as they are advocating presently, are dismissed at the close of discovery on liability, all of this becomes entirely unnecessary. If, on the other hand, it turns out that they're held over for trial, and we're then going down a road of damage discovery, all of this information becomes part of the inquiry we are doing anyway, and we may at that point be investigating whether or not a special master is the best person to go through this

process and to come up with some creative ways, as your Honor suggested, to do smaller inquiries to get at the whole samples.

THE COURT: I recognize that much of what you say has merit. My reaction to a lot of these requests was, quite frankly, they're overbroad. But I don't think the solution is, nor do I think I appropriately could say, if we back burner all of the discovery that the plaintiffs might provide in these areas, as a practical matter it may never need to occur. That could be said about virtually every lawsuit, because if the defendant wins on summary judgment, there is not a lot for the need for the plaintiff to provide discovery.

I am going to require that to the extent that there are treaty reinsurance agreements that relate to these claims, that they be produced. To the extent that there are I guess it is facultative agreements.

MR. CARTER: There is such a thing as facultative reinsurance, yes, your Honor.

THE COURT: There I think there needs to be some exploration of how many such agreements there are. There has to be some showing of burden and we can have a discussion about how we proceed with respect to those, if at all. But, I'm not willing to back burner that completely.

As I said, with respect to the individuals' claims, I think there needs to be some discussion about ways to sample or come up with specimens of the different tracks that various

claims may have been on. Understanding we're not going to capture every claim, but providing some meat for the bones when Mr. Cottreau and his colleagues on the defense side file summary judgment motions, if that's necessary. It may be that you're correct that it is totally unnecessary, but I think it is not an unreasonable discovery request to make.

I'm jumping ahead a little just because I think it is illustrative, I think request number seven, "all documents concerning your contention that class certification is appropriate" strikes me as uncommonly broad and it guess worse as you go along. Request number nine, "all documents concerning or reflecting any communication concerning any document you received from any third parties."

MR. COTTREAU: Your Honor, if I could attempt to explain where we got eight through 15.

THE COURT: It may be the reverse of what they've asked you for.

MR. COTTREAU: No, it's not, your Honor. I wouldn't think of that as a legitimate reason and wouldn't come here and assert it.

What we have is, as you know, we went through three rounds I believe last winter and spring of trying to narrow this case through initial disclosures. And initially we got a list of initial disclosures from the plaintiffs that were very vague, with categories and then what we got is a lengthy sort

of amalgam of witnesses and documents that still had a lot of categories in them. Then ultimately we got some witnesses broken down by defendant, but still the document amalgams stuck. And eight through 15 really tries to probe what the plaintiffs are talking about in their initial disclosures.

Just to give you a few examples. On the document front, they had an initial disclosure number paragraph nine in their initial initial disclosures, they said they were going to be relying on it to prove liability in this case all documents received from as a result of their FOIA requests. Documents received from third parties via FOIA, and then they had in their amended initial disclosures at page 103 all documents or documents they obtained via letter rogatory processes. Very vague. And then further they had in their initial disclosures about 23 categories of documents that they referred to just generally, including government intelligence reports regarding al Qaeda, government intelligence reports regarding funding terrorists, trials related to al Qaeda.

Instead of listing 23 categories which is what they gave us, we tried to come up with one broad enough category to encompass what it is they are talking about in their initial disclosures, which the initial disclosures didn't illuminate in any way since those were disclosures about categories of documents. We're trying to get the categories of documents. To the extent we could have engage in a narrowing discussion,

we would have been happy to do so. Their perspective has been since last fall that discovery should be one way from us at this stage and nothing from them and that's the kind response we got back.

MR. CARTER: I guess a couple points. The one is to take us back to the beginning when we had the initial dialogue about the defendants doing consolidated discovery, the Court had directed the plaintiffs executive committee to conduct consolidated discovery of the defendants such that defendants would only receive one set of discovery requests from the plaintiffs' side. And as a reciprocal consideration we asked the defendants to sit down and think amongst themselves to try to reduce the burden on us.

The reason we gave you all the discovery requests we've gotten from the individual defendants was to show there has been wholesale discovery by each of the individual defendants as to every fact that has been potentially relevant to the claim against that defendant. As a result, the consolidated discovery requests just end up being an additional set of discovery for which we have to index tens and tens of thousands of documents and respond to the defendants.

It has not been one sided. I should say, your Honor, we've produced tens of thousands of documents already in discovery, and in most cases our productions outstrip the productions that we've received from the defendants. And we

are going through a process of indexing all of the documents and identifying the individual defendant's request to which they're responsive. Everything is covered by these. In fact, for most of the defendants, we got a request that said any document identified in your initial disclosure. Which is exactly what Mr. Cottreau just described the consolidated --

THE COURT: What was the response to that?

MR. CARTER: Your Honor, I'm not sure. I think some of them came recently. I am not sure we responded to all of them. What I would say is the letters rogatory is the perfect example. The procedure in this case in place requires us to serve letters rogatory on notice to all parties and that's been done. That's one category of information they have. Subpoenas is the same thing. They mentioned FOIA requests. We make clear in our response we have no objection to providing the documents we received in response to the FOIA requests to the defendants, to the extent they are relevant to remaining claims in the litigation. Going through the process of going through our files to the extent there is communications with FOIA officers at various agencies concerning the status of requests that have been pending for eight years, quite honestly, your Honor, I think the reason that catch all is in there in the initial disclosures is because of the FOIA process itself. You send your FOIA request in 2003. You are doing initial disclosures in 2010, and you have no idea what you are going to

get. When we get substantive documents back from the agencies, we have and we'll continue to produce them.

THE COURT: You mention the fact that you're indexing documents in response to the individual requests that are part of the larger binder that I have. These are really catchall requests I gather trying to capture documents which may not be captured by the individual requests. And going back to request number nine, "all documents concerning or reflecting any communication concerning (A) any document you received from any third party" struck me as hopelessly overbroad.

But, when Mr. Cottreau says that -- correctly and I recall the list -- that in the response to the initial disclosure requirement I guess there is a paragraph that says "documents we've received from third parties."

At some point the plaintiffs have to put up or shut up in terms of documents. Later acquired documents is always a problem. But, as to documents currently in your possession, and by that I mean the plaintiffs collectively, it seems to me perhaps the catchall request ought to be any documents that relate to the plaintiffs' claims which are referred to in the initial disclosures. And that requires you to go through some sorting process. And I guess the caveat would be which have not been produced in response to individual requests. I am not sure there is a need then to index them. So in a way it is sort of a focused kitchen request if I can characterize it that

way.

Does that alleviate some of the burden?

MR. CARTER: I don't think that's a problem with one caveat. The way it is framed relates to any claim ever asserted in the litigation.

THE COURT: No. It should be claims that remain in the litigation. That's a perfectly valid point.

MR. CARTER: I think our point all along was once we finished the productions as to the individual defendants, there is not going to be anything left in the universe to produce in response to these. But, if that ends up being the result, then it is obviously no burden at all.

MR. COTTREAU: We agree it is no burden. Not undue, at least.

THE COURT: Okay. I may not have worded it terribly artfully and maybe I'll take a stab at it in an order that follows this conference.

But, given that generic ruling, what else should we talk about in terms of the requests? There is all documents relating to any witness you may depose or call at trial.

MR. COTTREAU: Again, this goes back to the initial disclosures. It is one that I think folks on our side are really perplexed about. We're going to be in a real quandary as to how to conduct depositions, given the initial disclosures of plaintiffs. Given that there are literally hundreds of

witnesses that have been disclosed to us, how is it that we decide which of those people to depose and which of them not to depose. We can send them an interrogatory if they're a party and ask them what they know and try to figure that out. Because all of these witnesses are third parties by and large, we don't know how to conduct discovery.

One good guide to it is they have unprivileged communications with folks or they've received documents from folks, it going to be a pretty good indication that that person may have information that's relevant to this litigation that they may call as a witness and somebody may want to depose, and that's the purpose of these inquiries.

THE COURT: Isn't that covered to a large extent by the ruling I just made?

MR. COTTREAU: Depending upon how it is phrased, it may be, your Honor. It may be.

THE COURT: I suppose there ought to be perhaps an additional one, beyond the one I tried to construct a few moments ago, that relates to any witness that the plaintiffs intend to depose or call at trial. "Call at trial" I know arguments can be made that those decisions haven't been made, but, as we get closer to actual depositions, again there has to be some decision making on the plaintiffs' side that in fact generates the production of additional documents. That's going to be happen sooner rather than later.

MR. COTTREAU: If I can add one subcategory, an affidavit or declaration from that witness if they intend on using that at any stage during the proceedings, that that witness be included as well. Not just called at trial or deposed if they are --

THE COURT: Witness or declarant or deponent or affiant. I think that's appropriate.

MR. CARTER: One of the caveats we'd like to have with regard to that is obviously the claims in this litigation have to do what we allege the defendants did on a covert basis. So their documents in our view are the most likely source for mining who the people with relevant knowledge are. And so, after we get those documents and we see who the witnesses are on their end, we may very well go through a process of collecting documents about that person. So we can have some understanding of who that person is. So we can't go through that process until we get their documents.

THE COURT: You can't produce today something that you don't yet have. On the other hand, before you depose an individual, to the extent you have documents that relate to that individual, you're going to have to produce those documents in advance. And at some point we'll need to talk about how far in advance. Or be precluded, unless there is a showing that the document couldn't have been gotten earlier.

MR. CARTER: I do appreciate I'm stating the obvious.

I'm trying to avoid briefing on what I anticipate will be a motion that says you didn't produce these documents by the end of the rolling production deadline, when of course we could not have. I think we should try and avoid that kind of motion practice.

THE COURT: That won't be an argument that I'll be sympathetic to unless there is some indication that you made efforts not to get the document that you knew was lurking out there so you wouldn't have to produce it. In general, obviously, I don't want either side to be sandbagged.

MR. CARTER: That's fine, your Honor.

THE COURT: Are there other document requests that we ought to talk about now that I've made those two generic rulings?

MR. COTTREAU: I think at this stage, your Honor, unless any of my counsel for the co-defendants who are also moving parties in this have anything to say, my respectful suggestion would be we take a look at what we get after those requests have been fulfilled, and if there are holes we be allowed to come back to your Honor and reevaluate.

THE COURT: Sure.

MR. CARTER: That's fine, your Honor.

THE COURT: I said what I wanted to talk about in my memo endorsement. Is there anything else anybody else?

MR. KREINDLER: One short thing we raised with your

Honor last, that's the order we're waiting for from Judge Daniels given the other proceedings. We'll be in front of him tomorrow but if we can have a heads up.

THE COURT: I honored my commitment and I raised with him two matters. One was the fact that my R and R with respect to al Qaeda have not yet been acted on. And I forget what the other issue was but I know I raised it. It was objections to something that was kicking around for a year or more.

MR. KREINDLER: Well, it is the al Qaeda one we're anxious about, because days matter.

THE COURT: I've raised that one with him. He was cognizant of it. And I suggest you raise it with him again tomorrow when you're there for that hearing on that one particular claim.

MR. COTTREAU: One clarification that my co-counsel in the case has reminded me of, is there is this issue of the documents that are collected from the dismissed defendants of late from Mr. Berenson's clients and Ms. Lutky's clients. The whole notion of that discovery and why it went forth and led to the depositions in Virginia that you are aware of because there was a motion to delay them, is because those depositions and documents were somehow relate to the remaining defendants. We're still not exactly sure how, but we understand there has been documents collected from by plaintiffs 22,000 or some number of documents and we just ask they produce those to us as

well.

MR. CARTER: We went through a lengthy and difficult negotiation process to resolve the claims against those defendants under very specific terms, and there is an agreement in place which precludes us from simply voluntarily turning over the documents we took as a result of that process to the defendants. And so, we're unable to act unilaterally --

THE COURT: I was about to interrupt you and say but why shouldn't I just direct you to produce those?

MR. CARTER: Your Honor --

THE COURT: You've had the benefit of them or lack of benefit of them, and why shouldn't the defendants have the same opportunity?

MR. CARTER: Your Honor, I think what we did actually is a little bit different. We went through a vast sort of warehouse of documents and decided what we as plaintiffs thought would be important to us.

THE COURT: Okay. Those are the only documents you possess?

MR. CARTER: That's correct, your Honor. I think what we would say is what we decided to take out of the vast room reflects our work product in terms of what we decided to select and what we decided to leave behind. The defendants haven't gone the road of issuing a subpoena to try and get complete access to the records themselves.

THE COURT: But you did issue a subpoena.

MR. CARTER: We did. And we were compelled to withdraw it after -- if you recall, we had lengthy argument and there was a request that we pay many hundreds of thousands of dollars for the defendants' counsel to go through the records. And after a series of hearings on the issue, we worked out this agreement. And I think that what we prefer to see at this point -- I'm sure counsel for those defendants wants to be heard on this issue. It was not on the agenda. It hasn't been briefed.

THE COURT: We'll table it to the next session, but you should share with counsel for those former defendants that my inclination is to direct that the documents be produced. And so that hopefully can lead to some letters discussing the issue before the next conference.

MR. CARTER: Thank you, your Honor.

THE COURT: Anything else?

MR. KREINDLER: No, your Honor.

THE COURT: When is the next conference?

MR. CARTER: That is the one issue, your Honor. I apologize. The next conference is two days before the broader case management conference before Judge Daniels. We had discussed previously perhaps moving the discovery conference to the same day. I think the conference before Judge Daniels is on the 13th, if I'm not mistaken, of January.

MR. KREINDLER: That Friday. The 14th.
THE COURT: His conference is --
MR. KREINDLER: It is that Friday -- my calendar and my phone is checked downstairs. So I can't --
THE COURT: Friday the 13th of January?
MR. KREINDLER: That's it.
MR. CARTER: We're on schedule for the 11th.
THE COURT: That makes no sense. What time is the conference with him?
(Discussion off the record)
THE COURT: We'll try to accommodate you folks so that you're not making two trips, and we'll let you know if we're able to. We can do that in the next few days.
MR. CARTER: Thanks, your Honor.
THE COURT: Have a good holiday, everyone.

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